NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. MARCOS SANCHEZ-CASTRO, Defendant - Appellant.	No. 05-50665 D.C. No. CR-04-00993-MMM MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Margaret M. Morrow, District Judge, Presiding

Submitted July 18, 2008**
Pasadena, California

Before: WALLACE, O'SCANNLAIN, and WARDLAW, Circuit Judges.

Marcos Sanchez-Castro appeals the sentence imposed following his plea of guilty to illegal reentry following deportation in violation of 8 U.S.C. § 1326. He

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel finds this case suitable for decision without oral argument ***See*** Fed. R. App. P. 34 (a)(2).

seeks reversal of his sentence on six grounds, which are squarely foreclosed by our case law. We affirm the sentence issued by the district court.

Sanchez-Castro argues that his sentence was unreasonable. We disagree. The district court properly calculated the applicable Guidelines range, dutifully considered the factors enumerated in 18 U.S.C. §3553, and sentenced Sanchez-Castro to the low end of the applicable range. *See Rita v. United States*, 127 S. Ct. 2456, 2465 (2007); *see also United States v. Carty*, 520 F.3d 984, 993-94 (9th Cir. 2008) (en banc).

Sanchez-Castro also argues that a sixteen-level enhancement of his offense level based on a prior conviction was unconstitutional, arguing that *Almendarez-Torres v. United States*, 523 U.S. 224 (1998) was implicitly overruled by *United States v. Booker*, 543 U.S. 220 (2005), and its predecessor Sixth Amendment cases. We rejected this argument in *United States v. Velasquez-Reyes*, 427 F.3d 1227, 1229 (9th Cir. 2005), and we reject it again.[1]

Sanchez-Castro also claims to have been denied his right to allocution. A review of the transcript shows that the district court afforded him ample chance to speak on his own behalf, and that he did so. As our law requires, Sanchez-Castro

[1] Here, moreover, the prior conviction was part of the indictment and admitted by Sanchez-Castro during his plea colloquy, thus satisfying *Booker*'s Sixth Amendment holding.

was able to "fully present all available accurate information bearing on mitigation of punishment . . . ." *United States v. Mack*, 200 F.3d 653, 658 (9th Cir. 2000).

Finally, Sanchez-Castro raises three arguments about the conditions of his supervised release. First, he argues that the district court improperly delegated to a probation officer the determination of the maximum number of non-treatment-program drug tests to which he must submit. Sanchez-Castro did not object to this condition in the district court, and notwithstanding our ruling in *United States v. Stephens*, 424 F.3d 876 (9th Cir. 2005), *reh'g en banc denied* 439 F.3d 1083 (9th Cir. 2006), this is not reversible error on plain error review. *See United States v. Maciel-Vasquez*, 458 F.3d 994, 996 (9th Cir. 2006) (holding imposition of an identical condition was not plain error).

Second, Sanchez-Castro argues that the district court improperly delegated to the probation officer the decision regarding whether and how much he should pay for post-custodial treatment ordered by the court. He acknowledges, however, that this argument was rejected in *United States v. Dupas*, 419 F.3d 916, 924 (9th Cir. 2005), subsequent to the filing of his appeal.

Third, Sanchez-Castro argues that the reporting requirement violates his right against self incrimination under the Fifth Amendment. He also acknowledges

that this argument was rejected in *United States v. Rodriguez-Rodriguez*, 441 F.3d 767, 771-72 (9th Cir. 2006), subsequent to the filing of his appeal.

AFFIRMED.